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IN THE

Supreme Court of the United States

No. 486

ADVERTISERS EXCHANGE, INC.,
A CORPORATION,

Petitioner,

v.

L. E. HINKLEY, DOING BUSINESS UNDER THE TRADE NAME AND STYLE OF HINKLEY SELF SERVICE GROCERY,

Respondent.

PETITION AND BRIEF FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

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INDEX.

	PAGE
Petition	1
Jurisdiction	2
Summary Statement of the Case Involved	3
Questions Presented	7
Reasons Relied on for Allowance of Writ	9
Brief in Support of Petition	14
Jurisdiction	14
Statement of Case	15
Specifications of Errors	15
Conclusion	21

CASES CITED.

Amsterdam Syndicate, Inc. v. Fuller, 154 Fed. 2d 342 ..... 10, 19

Burndy Engineering Co. v. Sheldon Service Corp., 127 Fed. 2d 661 ..... 10, 20

Campbell v. Wireback, 269 Fed. 372 21

Douglas v. Cunningham, 294 U. S. 207 .....9, 13, 14, 17

Interstate Hotel Co. v. Remick Music Corp., 157 Fed. 2d 744 ..... 10, 19

PAGE

Jewell-LaSalle v. Buck, 283 U. S. 202 17
Johns & Johns Printing Co. v. Paull-Pioneer Music Corp., 102 Fed. 2d 282 ..... 10, 18
Journal Pub. Co. v. Drake, 199 Fed. 572 ..... 11, 21

Schellberg v. Empringham, 36 Fed. 2d 991 21

Westermann Co. v. Dispatch, 249 U. S. 100 ..... 9, 13, 16
Widenski v. Shapiro, 147 Fed. 2d 909 ..... 11, 21
Woolworth v. Contemporary Arts, Inc., 193 Fed. 2d 162 ..... 11, 21

STATUTES AND RULES CITED.

Title 17, United States Code, Section 101..... 2, 6, 7, 8, 11, 12, 14

Title 28, United States Code, Section 1338 ..... 2, 3, 14

Rules of Civil Procedure, Section 18 (a) 7, 11, 18

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Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

To the Honorable, the Chief Justice and Associate Justices of the Supreme Court of the United States:

The petitioner respectfully prays that a writ of certiorari issue to review the decision and judgment of the United States Court of Appeals for the Eighth Circuit in the above entitled case. Requisite copies of the record of this case and the decision of the United States Court of Appeals for the Eighth Circuit are furnished herewith in accordance with Rule 38.

Jurisdiction.

The statutes under which jurisdiction is invoked are Title 17, United States Code, Section 101, and Title 28, United States Code, Section 1338.

The pertinent portions of these sections are as follows:

Title 17, United States Code, Section 101:

> "101. INFRINGEMENT.—If any person shall infringe the copyright in any work protected under the copyright laws of the United States such person shall be liable:
>
> (a) INJUNCTION.—To an injunction restraining such infringement;
>
> (b) DAMAGES AND PROFITS; AMOUNT; OTHER REMEDIES.—To pay to the copyright proprietor such damages as the copyright proprietor may have suffered due to the infringement, * * * or in lieu of actual damages and profits, such damages as to the court shall appear to be just, and in assessing such damages the court may, in its discretion, allow the amounts as hereinafter stated, * * * and such damages shall in no other case exceed the sum of $5,000 nor be less than the sum of $250, and shall not be regarded as a penalty. But the foregoing exceptions shall not deprive the copyright proprietor of any other remedy given him under this law, nor shall the limitation as to the amount of recovery apply to infringements occurring after the actual notice to a defendant, either by service of process in a suit or other written notice served upon him.
>
> * * * * *
>
> Second. In the case of any work enumerated in section 5 of this title, except a painting, statue, or

sculpture, $1 for every infringing copy made or sold by or found in the possession of the infringer or his agents or employees;"

Title 28, United States Code, Section 1338:

"(a) The district courts shall have original jurisdiction of any civil action arising under any Act of Congress relating to patents, copyrights and trademarks. Such jurisdiction shall be exclusive of the courts of the states in patent and copyright cases."

Summary Statement of the Case Involved.

The facts in this case were, for the sake of brevity, presented to the United States Court of Appeals for the Eighth Circuit by setting forth only the first cause of action and the prayer for relief of the complaint, the answer, the memorandum filed in the United States District Court and the excerpt of the testimony of Mr. Alpha M. Bond with respect to the question of actual damages and the District Court's ruling thereon.

From the opinion of the District Court (r. p. 9, fol. 11) it appears:

"Plaintiff is engaged in the syndicated advertising business in which it creates various advertisement series which are assembled and published in book form to be delivered to its subscribers each month, together with a sufficient number of mats to reproduce the advertisements in newspapers. Each subscriber signs a contract which authorizes him to use the copyright service for a certain period of time, generally one year, and thereafter until cancelled by either party to the contract. The contract provides that only one subscriber shall be served in each town.

On February 20, 1947 plaintiff entered into such an agreement with the defendant. Thereafter the plaintiff sent to the defendant 12 volumes of its copyright food service, together with the necessary mats to produce the advertisements shown in each volume. The amount of the contract price was remitted by the defendant to and including the month of February, 1948.

(fol. 13)

On March 11, 1948 plaintiff by registered letter cancelled the contract with defendant, giving as its reason for cancellation, that defendant had stated to plaintiff's sales agent that he did not wish to continue with the service after March 31, 1948. However, the plaintiff did bill defendant for the month of March, and defendant replied that because of the cancellation of the contract, he did not feel that he should be required to pay for this month, and the charge was cancelled, and defendant's account was closed by plaintiff.

In that letter plaintiff notified defendant to destroy all the material, cuts, etc., so that they would not fall into the hands of any person who did not have a right to use them. The defendant did not do this, but continued to publish the copyrighted advertisements through the month of December, 1949, or to at least use certain portions of them in ads which he inserted in the local newspaper 'The Clinton Eye'. Plaintiff's copyrighted material was used in 29 such advertisements by defendant in this newspaper during this period of time. This publication enjoyed a circulation of 3261 copies."

There were actually 13 copyrighted books infringed as an examination of the complaint (r. p. 5, fol. 6) will indicate.

The Trial Court found that the contract had been cancelled at the request of the defendant (r. p. 12, fol. 14 and exhibit, fol. 15):

> "First, I think there is no question but that the contract was cancelled, and it was understood between the parties. The evidence shows that prior to the posting of the letter of March 11, 1948,[2] sent by plaintiff by registered mail and received by defendant on March 15, the defendant had advised the sales agent of the plaintiff that he did not desire to continue the service beyond the month of March, 1948. The information was communicated to the plaintiff by its agent, and in response to that communication, this letter was written."

The Trial Court further found (r. p. 14, fols. 16 and 17):

> "In the case before us, the defendant had full knowledge that the matter which he had purchased was fully covered by copyrights. I can come to no other conclusion except that the defendant reproduced the copyright with the (fol. 17) knowledge that it was copyrighted, although he may have believed that he had a legal right to do so. However, the lack of intention to violate a copyright does not excuse one from the penalties of such a violation. (*Toksvig* v. *Bruce Pub. Co.*, 7 Cir. 181 F. (2) 664, 666 and cases cited therein.)"

The Court also found that the petitioner did not prove any specific damages or loss of profits (r. p. 14, fol. 17) and in fact at the trial had excluded evidence with respect to actual damages (r. p. 16, fols. 19 and 20).

Although the Trial Court found that 13 separately copyrighted books were infringed in 29 issues of a newspaper on 29 different dates after the defendant's license to reproduce these advertisements had been cancelled at

the defendant's own request and after written warning by the plaintiff that the material was copyrighted and may only be used by persons who have the exclusive franchise thereto, and the trial Court having excluded testimony with respect to actual damages, it, nevertheless, awarded the plaintiff the total sum of $312 on the 29 causes of action alleged in the complaint.

The plaintiff thereupon appealed to the United States Court of Appeals for the Eighth Circuit where the questions of law with respect to the proper rule as to damages were presented. The Court of Appeals adopted the findings of fact of the Court below (r. p. 32, fol. 34). It too found that the Appellant "made no proof of actual damages or profits on account of the infringement" (r. p. 33), and determined (r. p. 34):

> "There was, therefore, no basis for an award of damages in the amount of 'actual damages' and there was no proof of loss of profits so that the 'in lieu' provisions of the section alone must be looked to to fix the measure of the recovery of damages to which plaintiff was entitled on account of the infringement."

Nevertheless, the United States Circuit Court of Appeals for the Eighth Circuit affirmed the judgment of the Court below awarding the plaintiff the sum of $312, in effect substituting for the "in lieu" provisions of the statute (Title 17 U. S. Code, Section 101) the terms of the contract which had been cancelled at the defendant's own request, interpreting the statute to cover a single law suit without regard to the number of different copyrights involved or the number of infringements involved.

Questions Presented.

The decisions of the Courts below present the following questions:

1. Does a complainant, by joining in one action pursuant to Section 18 (a) of the Rules of Civil Procedure, 29 causes of action each separately and distinctly numbered, 13 of which allege infringements of 13 different and separately copyrighted books upon 13 different dates and 16 of which allege infringements of other and different portions of the said 13 copyrighted books on each of 16 other and different occasions, lose the right to separate damages for each cause of action?

2. Under the provisions of Title 17, United States Code, Section 101, is the copyright proprietor entitled to separate damages for each copyrighted book infringed although the infringer be the same person?

3. Under Title 17, United States Code, Section 101, is a copyright proprietor entitled to separate damages for each infringing publication when a copyrighted book is infringed on more than one occasion by the publishing of portions thereof in more than one issue of a newspaper?

4. Under Title 17, United States Code, Section 101, in a case where a defendant deliberately cancelled his license to reproduce copyrighted advertisements and where he received actual written notice that these advertisements were copyrighted and may only be used by persons who have a franchise therefor and who, thereafter willfully and intentionally proceeded to publish such copyrighted advertisements over a period of almost two years, is the copyright proprietor entitled to damages at the rate of $1.00 per infringing copy?

5. In a case where 13 copyrighted books were infringed upon 29 separate, distinct and different occasions, is the plaintiff entitled to damages of not less than $250 nor more than $5,000 for each of the 29 infringements pursuant to the "in lieu" provisions of Title 17, U. S. Code, Section 101.

6. In an action for infringement of 13 copyrights upon 29 different occasions where the complaint set forth 29 causes of action each alleging a different infringement and where the trial took portions of two days, involving the introduction of approximately 100 exhibits, and where counsel, of necessity, spent immeasurable time in the preparation of the complaint, in the preparation for the trial and memoranda of law, was it an abuse of discretion to deny a reasonable counsel fee?

7. Where the District Court found that there was no proof of actual damages, after having excluded an attempt to prove actual damages, was it error to award the plaintiff a judgment for a sum which is based upon the price of a subscription for the period during which 13 copyrighted books had been infringed upon 29 different occasions, and was it error for the United States Court of Appeals for the Eighth Circuit to affirm such judgment?

8. In a case where, after written notice of the rights of the copyright proprietor, the defendant willfully and intentionally infringed 13 separately copyrighted volumes upon 29 different occasions, was it an abuse of discretion on the part of the District Court to refuse to award damages at the rate of $1.00 per infringing copy and did the United States Court of Appeals for the Eighth Circuit err in affirming the judgment?

9. Where 13 separately copyrighted books were infringed upon 29 different occasions, was it error for the

District Court to refuse to award damages of not less than $250 nor more than $5,000 for each of the 29 infringements, but to award a sum of $312 and was it error for the United States Court of Appeals for the Eighth Circuit to affirm said judgment?

Reasons Relied on for Allowance of Writ.

1. The United States Court of Appeals for the Eighth Circuit in the instant case rendered a decision in conflict with decisions of the Supreme Court of the United States.

In the case of *L. A. Westermann Co.* v. *Dispatch Printing Co.*, 249 U. S. 100, six copyrighted pictorial illustrations of styles in women's apparel were infringed by publication in newspapers. Five of the copyrighted illustrations were published once and the sixth was published twice. There were seven publications of the six copyrighted illustrations. The Court held:

> "In our opinion the District Court erred in awarding less than $250 damages in each of the seven cases, and the Circuit Court of Appeals erred in holding that there was only one case instead of seven".

In the case of *William A. S. Douglas* v. *Elijah Cunningham*, 294 U. S. 207, where the question presented was that of the proper amount of damages in an action involving infringement of copyright, a writ of certiorari was granted:

> "We granted the writ of certiorari because the decision of the Circuit Court of Appeals was upon an important question of federal law and probably in conflict with our decisions."

The instant case is quite similar, insofar as the facts are concerned, to the *Westermann* (*supra*) case, in that in the instant case 13 copyrighted books were infringed by publication on 29 different dates in a local newspaper. The damages in the instant case should have been not less than $250 for each of the 29 publications under the "in lieu" provisions of Title 17, U. S. Code, Section 101.

2. The United States Court of Appeals for the Eighth Circuit in the instant case rendered a decision in conflict with that of the other Circuit Courts including its own prior decisions.

In the case *Johns & Johns Printing Co.* v. *Paull-Pioneer Music Corp.*, 102 Fed. 2d 282 (8th Cir.), which case is referred to in the opinion of the Court of Appeals in the instant case, two copyrighted songs were infringed and the Court of Appeals awarded $250 on each count of the petition.

In the case of *The Amsterdam Syndicate, Inc.* v. *J. J. Fuller,* 154 Fed. 342 (8th Cir.), the Court of Appeals reversed a judgment of the District Court which refused to award $250 for each of five publications occurring after the expiration of a contract quite similar to the contract in the instant case. Following the reversal a judgment was entered in the District Court for $1,250.

In the case of *Interstate Hotel Co.* v. *Remick Music Corp.,* 157 Fed. 2d 744 (8th Cir.), the Court of Appeals affirmed a judgment of $250 for each infringement.

In the case of *Burndy Engineering Co., Inc.* v. *Sheldon Service Corp.,* 127 Fed. 2d 661, a catalogue was published which infringed three of the plaintiff's copyrights, and thereafter a second catalogue went to three separate print-

ings and this one too infringed the three copyrights. The defendants also printed 500 copies of a separate revised page which infringed the plaintiff's copyrights. The District Court awarded damages of $250 for the infringements of each of the plaintiff's copyrights by the defendant's first catalogue, an aggregate amount of $750; $250 for the infringement of each of these copyrights by the three separate issues of the second catalogue, an aggregate amount of $2,250; and $500 for the infringement by the 500 copies of the separate revised page. The judgment of the District Court was affirmed by the Court of Appeals.

See, also:

Journal Pub. Co. v. *Drake*, 199 Fed. 572 (9th Cir.);
Widenski v. *Shapiro, Bernstein Inc.*, 147 Fed. 2d 909 (1st Cir.);
F. W. Woolworth v. *Contemporary Arts, Inc.*, 193 Fed. 2d 162 (1st Cir.).

3. Important questions of federal law are involved in the instant case.

If the decision of the Circuit Court in the instant case is permitted to stand, it will negate the provisions of Section 18 (a) of the Rules of Civil Procedure which permits a plaintiff to join in his complaint as many claims as he may have against the opposing party.

The decision also involves interpretation of Title 17, United States Code, Section 101, more specifically, whether the phrase "and such damages shall in no other case exceed the sum of $5,000 nor be less than $250" refers to each separate infringement or to the sum total of infringements by any one person, no matter how many there may be, of all the copyrights owned by a copyright proprietor no matter how many separate and distinct copyrights he may own.

The decision also involves the construction of the provision in said Section which provides:

> "Nor shall the limitation as to the amount of recovery apply to infringements occurring after the actual notice to a defendant, either by service of process in a suit or other written notice served upon him."

The decision of the Circuit Court in the instant case would limit the words "or other written notice served upon him" to infringements committed by a defendant after a law suit had been started and if this reasoning is permitted to stand the words become meaningless.

The proper construction of Title 17, United States Code, Section 101, is of the utmost importance to the syndicated advertising business as well as many other businesses throughout the United States.

The judgment of the Courts below, while purporting to deny that it is an award of actual damages based upon the subscription price, nevertheless, that is what it in fact amounts to. The subscription price of the cancelled contract in the instant case is at the rate of $156 per year, the infringements covered a period of two years, the judgment is for $312.

In a case where a defendant infringes on many occasions but all of which infringements are compassed within the period of one year, the damages, following the reasoning in this case, would be limited to the $250 minimum, as though it were one infringement. To protect its rights the plaintiff would have to start a suit in the United States District Court which would cost it more than the amount recoverable under the theory of the decisions of the District and Court of Appeals in the instant case. It would not take long for the syndicated advertising business to disappear under such conditions. They depend upon the rights granted by the Copyright Law for their very exis-

tence. If the decision in the instant case be permitted to stand it will result in the breakdown of the plaintiff's method of doing business. It will deprive it of its most important asset, the right to grant an exclusive franchise. It is this right which Congress sought to protect and which the Supreme Court recognized in the *Westermann* (*supra*) and *Douglas* (*supra*) cases since the contract price cannot take this intangible right into account.

WHEREFORE, your petitioner prays that a writ of certiorari be issued under the seal of this Court directed to the United States Court of Appeals for the Eighth Circuit to the end that this cause may be reviewed and determined by this Court.

ADVERTISERS EXCHANGE, INC.

By: J. FRANKLYN SMITH, *President,*
Petitioner.

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New York 1, N. Y.

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L. E. HINKLEY, DOING BUSINESS UNDER THE TRADE NAME AND STYLE OF HINKLEY SELF SERVICE GROCERY,

Respondent.

BRIEF IN SUPPORT OF PETITION.

Jurisdiction.

The statutes under which jurisdiction is invoked are Title 17, United States Code, Section 101, and Title 28, United States Code, Section 1338.

A case which propounds the principle of granting a writ where the decision of the Circuit Court is in conflict with the decisions of the Supreme Court and where an important question of federal law is involved is *Douglas* v. *Cunningham,* 294 U. S. 207.

The reasons for granting a review on a writ of certiorari in this case under Rule 38 are found under the caption, "Reasons Relied on for Allowance of Writ" on pages 9 to 13.

Statement of Case.

The case, so far as material to the consideration of this application, is stated in this petition on pages 3 to 6.

Specifications of Errors.

The errors which petitioner will urge if a writ of certiorari is granted, are that the United States Court of Appeals for the Eighth Circuit erred in:

1. Treating 29 separate infringements on 29 different occasions of 13 separately copyrighted books as one "case" and awarding damages for only one infringement.

2. Refusal to remand the cause to the United States District Court with instructions to award separate damages for each of the 29 infringements of 13 separately copyrighted books.

3. Refusal to remand the cause to the United States District Court with instructions to award damages at the rate of $1.00 for each infringing copy or in the alternative to award damages of not less than $250 nor more than $5,000 for each of the 29 separate infringements.

4. Refusal to remand the cause to the United States District Court with instructions to award a counsel fee.

POINT ONE.

The decision of the Circuit Court is in conflict with the decisions of the Supreme Court.

In the instant case 13 different books of advertisements were separately copyrighted and were infringed by the defendant on 29 separate occasions by publishing advertise-

ments in his local newspaper on 29 different occasions extending over a period of almost two years. Each of the 13 books was infringed at least once. Some of the books were infringed more than once by having different portions of them taken and incorporated in different advertisements published on separate occasions. The situation here is very similar to the situation in the case of *Westermann* v. *Dispatch,* 249 U. S. 100, where there were six copyrights involved, five of which were infringed once and the sixth infringed twice, a total of seven publications.

The question was presented by Supreme Court as follows (p. 102):

> "Whether there were seven cases of infringement or only one, and whether the damages should have been assessed at not less than $250 for each case, are the questions to be considered."

The Court then determined the question (p. 103):

> "On this point the circuit court of appeals aptly said:
>
> "The plaintiff's damages resulted in the injury to his Moorhouse contract, and in the discouragement of and the tendency to destroy his system of business. To make any accurate proof of actual damages was obviously impossible."

Continuing at page 105 the Court said:

> "The statute says that the liability thus defined is imposed for infringing 'the copyright in any' copyrighted 'work'. The words are in the singular, not the plural. Each copyright is treated as a distinct entity, and the infringement of it as a distinct wrong, to be redressed through the enforcement of

this liability. Infringement of several copyrights is not put on the same level with infringement of one. On the contrary, the plain import of the statute is that this liability attaches in respect of each copyright that is infringed. Here six were infringed, each covering a different illustration. Thus there were at least six cases of infringement in the sense of the statute. Was there also another? The illustration covered by one of the copyrights was published on two separate occasions, each time in a different advertisement. There was no connection between the two advertisements other than the inclusion of the same illustration in both. * * *. In these circumstances, we think the second publication must be regarded as another and distinct case of infringement.

* * * * *

"We conclude, as did the district court, that there were seven cases of infringement in the sense of the statute."

* * * * *

"In our opinion the District Court erred in awarding less than $250 damages in each of the seven cases, and the Circuit Court of Appeals erred in holding there was only one case instead of seven."

In the instant case the damages should have been not less than $250 nor more than $5,000 for *each* of 29 infringements.

Douglas v. *Cunningham,* 294 U. S. 207;
Jewell-LaSalle v. *Buck,* 283 U. S. 202.

POINT TWO.

Decision of the Circuit Court conflicts with decisions of other Circuit Courts of Appeals as well as its own prior decisions.

In the case of *Johns & Johns Printing Co.* v. *Paull-Pioneer Music Corp.*, 102 Fed. 2d 282, the Court of Appeals for the Eighth Circuit in a case where two separate copyrights were involved awarded the sum of $250 on each count of the petition notwithstanding the counts were joined in one complaint:

> "The Paull-Pioneer Music Corporation brought this suit seeking appropriate relief for the infringement of its copyrights on the musical compositions 'Let Me Call You Sweetheart' and 'The Sidewalks of New York'. The bill of complaint is in two counts. Both counts are similar except for the title and copyright history of the respective song involved * * * judgment was awarded for damages in the sum of $250 on each count of the petition, for $100 attorney's fees and for costs."
>
> * * * * *
>
> "And in the absence of proof of both actual damages and profits the trial court is required to award the minimum statutory sum of $250."

In that case the Court of Appeals involved recognized the provisions of Section (18a) of the Rules of Civil Procedure which provides:

> "Joining of claims. The plaintiff in his complaint * * * may join either as independent or as alternate claims as many claims either legal or equitable or both as he may have against an opposing party."

Then again in the case of *The Amsterdam Syndicate, Inc.* v. *J. J. Fuller,* 154, 2d 342, a contract very similar to the one in the instant case was involved. There the contract had expired and the material from each of the copyrighted books was published on five separate occasions. The District Court found for the defendant. The Court of Appeals for the Eighth Circuit reversed the District Court and remanded the case, resulting in a judgment for the plaintiff for $1,250. The Court of Appeals saying:

> "The fact that the demand of the plaintiffs appears in this case to be harsh and unreasonable can make no difference. The 'in lieu' provisions of the statute under which the action is brought are, in contemplation of law, 'just', *Douglas* v. *Cunningham,* 294 U. S. 207; and if in fact the awards compelled by the statute are 'unjust' and unreasonable, 'the remedy lies with Congress', and not with the courts. *Jewell-LaSalle Realty Co.* v. *Buck,* 283 U. S. 202. See, also, *Westermann Co.* v. *Dispatch Printing Co.,* 249 U. S. 100; *Buck* v. *Jewell-LaSalle Realty Co.,* 8 Cir., 51 F. 2d 730; and *Johns & Johns Printing Co.* v. *Paull-Pioneer Music Corporation,* 8 Cir., 102 F. 2d 282. The contract in this case must be construed literally and as it reads without regard to the reasonableness of the result."

The Court of Appeals for the Eighth Circuit in *Interstate Hotel Co.* v. *Remick Music Corporation,* 157 Fed. 2d 744, held:

> "The other assignment is that the court committed error in entering a judgment in favor of each appellee for $250 for each infringement committed by appellants. The judgments were for the minimum amount permitted by the Copyright Act in cases of infringement where actual damages were not established."

Thus we see that until the instant case came before the Court of Appeals for the Eighth Circuit it too had recognized the law in copyright infringement cases to be:

1. That damages of not less than $250 nor more than $5,000 must be awarded for each copyrighted book infringed.

2. That damages of not less than $250 nor more than $5,000 must be awarded for *each* separate infringement of each copyrighted book.

In the case of *Burndy Engineering Co., Inc.* v. *Sheldon Service Corporation*, 127 Fed. 2d 661, the Court of Appeals for the Second Circuit set forth the facts as follows:

> "This catalogue infringed three of plaintiff's copyrights—a fact conceded by the defendants in a consent decree adjudging infringement, which was entered against them on November 14, 1939. In the hope of avoiding charges of infringement defendants thereafter put out a second catalogue which nevertheless infringed all three copyrights. This second catalogue went to three separate printings, all of which somewhat differed both from one another and from the first catalogue issued and all of which infringed plaintiff's three copyrights. Defendants also printed 500 copies of a separate revised page C-16 of the second catalogue which infringed plaintiff's copyrights.
>
> The District court awarded statutory damages as follows: $250. for the infringement of each of plaintiff's copyrights by defendants' first catalogue, or the aggregate amount of $750; $250 for the infringement of each of these copyrights by the three separate issues of the second catalogue, or the aggregate amount of $2,250; $500 for the infringement of plaintiff's copyrighted work by defendants' revised page C-16.

The defendants' contention that this is a case of a repetition of identical infringing matter and, therefore, there were but three infringements in all, for which damages should be awarded is unfounded. *L. A. Westermann Co.* v. *Dispatch Co.*, 249 U. S. 100; *Cory* v. *Physical Culture Hotel*, 2 Cir., 88 F. 2d 411. The various issues of the catalogues were all found to be not identical but different and were found to contain infringing matter taken from the plaintiff's copyrights."

See also:

Journal Pub. Co. v. *Drake*, 199 Fed. 572 (9th Cir.);
Widenski v. *Shapiro*, 147 Fed. 2d 909 (1st Cir.);
Woolworth v. *Contemporary Arts*, 193 Fed. 2d 162 (1st Cir.);
Schellberg v. *Empringham*, 36 Fed. 2d 991 (1st Cir.);
Campbell v. *Wireback*, 269 Fed. 372 (4th Cir.).

Conclusion.

It is respectfully submitted that the errors committed by the United States Court of Appeals for the Eighth Circuit in the instant case are in conflict with the decisions of the Supreme Court of the United States and with the United States Court of Appeals for the other circuits as well as with its own decisions in prior cases and raise important questions of federal law which should be reviewed by the Supreme Court of the United States.

Respectfully submitted,

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December, 1952.